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Patrick W. Rasche Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102			MAI, TRI M	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/688,447

Filing Date: October 17, 2003

Appellant(s): NYKOLUK ET AL.

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Bruce Atkins  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 06/10/2008 appealing from the Office action mailed 02/27/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner agrees with appellant.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,890,570	Sadow	04-1999
5,464,080	Liang	11-1995
853,566	Sparks	5-1907
3,606,372	Browning	9-1971
5,908,093	Miyoshi	6-1999

4,538,709

Williams et al.

9-1985

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 30, 34, 35, and 42-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. (4538709). Williams teaches a baggage having a set of wheel 18a, a receptacle with an opening at 12 at the top portion of the baggage, retractable arms comprises of portions 50b and 50c (see Fig. 9), a towing handle 20 having a handle grip in such a manner that the handgrip can pivot relative to the distal end (note the handle is rotate from a position shown in Fig. 1 in to a 90 rotation so that it can be placed inside a compartment shown in Fig. 5). Williams teaches the proximal end being secured to the baggage at portion 7 in Fig. 5, and distal end and the distal end extending in extended in Fig. 9 and retracted positions in Fig. 10. Williams teaches the handle 20 is connected to the handle portions 50b and 50c via the connector 50a. With respect to the term “fixedly mounted”, it is submitted that this term is broad and does not require the two portions to be immovably connected.

Regarding claims 34-35, it is noted that the single pole arm has a circular cross section and along the axial length of the arm. Thus, it is arcuate between the proximal and distal ends.

Regarding claims 42-44, note the single stem being perpendicular to the handle. The stem is where the handle connected to the connector 50a.

Regarding claim 45, note the circular structure of the stem (note Fig. 2) and extends from the handgrip to the distal end of the arm.

Regarding claim 47, note that the handle of Williams is telescopically adjustable. Thus, it can be positioned in a flush position with the top wall of compartment 40 (note Fig. 5).

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2. Claims 30, 34, 35, and 38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadow (5890570) in view of Liang (5464080), and further in view of Sparks (853566). Sadow teaches a piece of baggage having a set of wheels, a receptacle in Fig. 1 providing an opening in the top of the piece of baggage, an arm portion 20 retractably engaged to the baggage and having an adjustable axial length extending between opposite proximal and distal ends being operatively to the baggage and the distal end positionable between an extended position and a retracted position. A towing having a handgrip at 21 and the handle being connected to the distal end as shown in fig. 1. Sadow does not mention: (a) the handle being pivoted relative to the distal end of the arm portion, and (b) a connector fixedly mounted to the distal end. Liang teaches that it is known in the art to provide an arm portion having adjustable axial length and a handgrip can be pivoted relative to the distal end:

Thus, as shown in FIG. 7 and as should by now be apparent, handle 42 is rotatable about the longitudinal axis defined by the second rod 56, and the second rod 56 is likewise rotatable with respect to the first rod 54.

Thus, it would have been obvious to one of ordinary skill in the art to provide a handle rotatable handle as taught by Liang to provide an alternative handle to enable one to provide an alternative rotating handle.

With respect to the connector, Sparks teaches that it is known in the art to provide a separate connector for connecting the handle being portion 8. It would have been obvious for one of ordinary skill in the art to provide a separate connector as taught by Sparks to provide a separate connector for mounting the end of the handle to enable one to install the handle properly.

Regarding claim 47, it would have been obvious to one of ordinary skill in the art to provide a flushed handle to provide the desired fit for the handle.

3. Claims 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadow in view of Liang and Sparks as set forth above in paragraph 2, and further in view of Browning (3606372). The Sadow combination meets all claimed limitations except for the non-circular cross section. Browning teaches that it is known in the art to provide a non-circular cross section for a handle as shown in Fig. 19. It would have been obvious to one of ordinary skill in the art to provide a non-circular cross section as taught by Browning, to provide the desired cross section for the handle.

Regarding claim 33, note that the cross section in Browning has an arcuate about portion 16 at the top portion of the cross section in Fig. 19.

4. Claims 48, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Sadow, in view of Liang (5464080), and further in view of Sparks (853566), and further in view of Miyoshi (5908093). As set forth above, Sadow teaches a piece of baggage having a set of wheels, a receptacle in Fig. 1 providing an opening in the top of the piece of baggage, an arm portion 20 retractably engaged to the baggage and having an adjustable axial length extending between opposite proximal and distal ends being operatively to the baggage and the distal end positionable between an extended position and a retracted position. A towing having a handgrip at 21 and the handle being connected to the distal end as shown in fig. 1. Sadow does not mention: (a) the handle being pivot relative to the distal end of the arm portion, (b) a connector fixedly mounted to the distal end, and (c) the arm portion comprising a plurality of tubular sections that are telescopically engaged.

With respect to the handle being pivot relative to the distal end, Liang teaches that it is known in the art to provide an arm portion having adjustable axial length and a handgrip can pivot relative to the distal end. Thus, it would have been obvious to one of ordinary skill in the art to provide a handle rotatable handle as taught by Liang to provide an alternative handle to enable one to provide an alternative rotating handle.

With respect to the connector, Sparks teaches that it is known in the art to provide a separate connector for connecting the handle being portion 8. It would have been obvious for one of ordinary skill in the art to provide a separate connector as taught by Sparks to provide separate connector for mounting the end of the handle as taught by Sparks to enable one to install the handle properly.

With respect to the arm portion comprising a plurality of tubular sections, Miyoshi teaches that it is known in the art to provide a plurality of tubular sections as shown in Fig. 8. Thus, it would have been obvious to one of ordinary skill in the art to provide a plurality of tubular sections as taught by Miyoshi to provide the desired length for the luggage.

Regarding claim 49, it is noted that the tubular sections in either Miyoshi or Sadow are arcuate along their axial length since they each have a circular cross section that extend along the length.

#### **(10) Response to Argument**

Appellant's arguments have been fully considered but they are not persuasive.

With respect to the rejection of Williams et al., appellant asserts that any movement of the handle causes the entire pole or portions thereof to twist or pivot together with the handle. Judging by the figures it is noted that each of the portions 50a, 50b, and 50c are connected to

another that would enable the handle to rotate from a position shown in fig. 4 to another position wherein the handle is rotated to fit into the compartment. It is clear from the drawings shown in Figs. 9-10 that the connector at portion 50a is rotatably connected to the arm via the locking annular grooves 55a and 56a. Since each of sections 50a, 50b and 50c are independently connected and independently rotatable, the examiner submits that the handle, together with the connector portion 50a is rotatable relative to the distal end of the arm 50b.

Appellant asserts that portion 50a is part of a arm and can not be the connector as claimed. The examiner submits that during examination, the claims can be interpreted broadly. In this case there is no structural difference between the claimed connector and portion 50a in Williams. Furthermore, the examiner submits that portion 50a is structurally distinguishable from that of the arm at portions 50a and 50c. It is noted of that portion 50A fixedly attached to the handle at one end and rotatably connected to the arm 50b via the annular grooves 56a and 55b. The examiner submits that connector 50a is structural distinguished from a the major portion of the arm and can be call a connector since it functions as a connector connecting the handle 20 and the major portion of the arm comprising 50b, 50c. Appellant further asserts that the connector is not fixedly mounted to the distal end of the arm portion as claim 30 recites. The examiner submits that the term “fixedly” is broad and does not require the connector portion 50a to be immovable with portion 50b. Although the specification defines portion 54 as the connector, the actual connection is that of portion 52 which is connected to the arm and the stem of the handle as shown in Fig. 6. It is submitted that this connector 52 is rotatably connected to both the arm and handle portion. Thus, applicant's own definition does not require the connector to be immovably connected at all.

With respect to the rejection of Sadow in view of Liang, and further in view of Sparks, the examiner submits that Sadow clearly teaches a rotatable handle. Appellant asserts that the Liang handle would obviate any need for a separate connector. The examiner submits that Liang teaches a ridge 70 confined for rotatable mounting about the lip 72. The examiner submits that to have the handle 72 to be rotatably mounted on to the arm 56, there would obviously be a connector so that the handle would securely fastened to the distal end of the arm 56. Liang does not teach whether the ridge 70 comprises a connector or that a connector is utilized. Sparks teaches that it is known in the art to provide a connector 8 connecting a handle to a distal end of the arm as shown in Fig. 1. The examiner submits that to provide such a connector in Liang as taught by Sparks would have been obvious to provide an alternative for connecting the handle to the arm.

Appellant also asserts that there the handle of Sparks is prevented from rotation via portions 6 (Sparks) and thus, there is no motivation to use the connector in Sparks. The examiner disagrees; the Examiner submits that the only structure that being modified here is the connector that is used to connect the two parts, and to use a connector of Sparks in either Sadow or Liang would have been obvious.

Regarding claims 32, and 33, the examiner submits to provide a non-circular handle in this art is well known as demonstrated by numerous prior art. In this instant, Browning teaches that it is known in the art to provide a non-circular cross section for a handle as shown in Fig. 19. It would have been obvious to one of ordinary skill in the art to provide a non-circular cross section as taught by Browning, to provide the desired cross section for the handle.

With respect to claim 48, this claim is similar to that of claim 30 with the limitation that the arm portion comprising a plurality of tubular sections, Miyoshi teaches that it is known in the art to provide a plurality of tubular sections (Fig. 8). Thus, it would have been obvious to one of ordinary skill in the art to provide a plurality of tubular sections as taught by Miyoshi to provide the desired length for the luggage.

**(11) Related Proceeding(s) Appendix**

The examiner notes that a decision has been rendered in Application Serial No. 10/875394 dated 08/04/2008.

Application 10/238390 is pending before the Board.

Application has been appealed pending a decision from the examiner.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tri M. Mai/

Primary Examiner, Art Unit 3781

Conferees:

/Nathan Newhouse/

Nathan Newhouse, SPE, Art Unit 3782

/Gary L. Welch/

Gary Welch, SPE, Art Unit 3765